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UNITED STATES DISTRICT COURT	
SOUTHERN DISTRICT OF NEW YORK	
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INDEMNITY INSURANCE COMPANY	: ECF CASE
OF NORTH AMERICA,	:
	:
Plaintiff,	: 07 Civ. 11288 (GEL)
	:
- against -	: <b>COMPLAINT</b>
	:
M/V “UNI CONCORD”; M/V “EVER	:
DIAMAOND”; their engines, tackles; boilers;	:
etc.; EVERGREEN MARINE	:
CORPORATION;	:
	:
Defendants.	:
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Plaintiff, through its undersigned attorney, alleges as follows for its complaint against defendants:

1. This action involves an admiralty and maritime claim within the meaning of Rule 9(h) with respect to the carriage of the subject cargo by sea and falls within the Court’s pendent, ancillary, and supplemental jurisdiction as to the remaining aspects of the claim. Plaintiff seeks recovery for cargo loss caused by defendants’ breaches of contract and torts.

2. Plaintiff Indemnity Insurance Company of North America sues herein as the subrogated insurer of the cargo in suit, having paid the insurance claim of Atalanta Corporation, and for and on behalf of the shipper, consignee and owner of the cargo as their interests may appear.

3. The captioned defendants are believed to be corporations organized under the laws of foreign sovereigns or certain of the fifty states. Upon information and belief defendants are engaged in the business of common carriers, bailees, warehousemen, and/or the provision of services related to such activities, and conduct such business with respect to shipments to, from and within the State of New York and the United States as a whole within the meaning of Rule 4(k)(2) Federal Rules of Civil Procedure.

4. Upon information and belief the captioned vessels are now, or will be during the pendency of this action, within the admiralty and maritime jurisdiction of this Honorable Court or is otherwise subject to jurisdiction pursuant to Rule 4(k)(2) Federal Rules of Civil Procedure.

5. This action involves loss and damage to a shipment of 1,776 cases of cheese, including soft spread and cream cheese, which moved, or was intended to move, in container EMCU5159097 aboard the M/V "UNI CONCORD", Voyage 0706-224N, and M/V "EVER DIAMOND", Voyage 0236-072E, from San Jose, Costa Rica, to New York, as described more fully in Evergreen Marine Corporation bill of lading EISU476600048379 dated on or about September 1, 2006, and others (Evergreen Marine Corporation Ref.: DMND072001)

6. The aforementioned loss and damage was caused by the unseaworthiness of the carrying vessels and reefer container as well as defendants' reckless failure to properly load, stow, carry, refrigerate, discharge, deliver and care for the subject cargo, and their fundamental breaches of, and unreasonable deviations from, the terms of the contract of carriage

7. As a result of the foregoing, plaintiff and those on whose behalf it sues, has sustained damages in the amount of \$40,000.00 for which defendants are jointly and severally liable as common carriers, bailees and/or warehousemen for hire.

8. Plaintiff sues on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally in the amount of \$40,000.00 together with interest at the rate of 9% per annum and the costs of this action and prays that this Honorable Court issue its process against the aforesaid vessels in rem.

Date: New York, New York  
December 14, 2007

LAW OFFICES,  
DAVID L. MAZAROLI

*s/David L. Mazaroli*

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File No.: 7G-1545